



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/145858

PRELIMINARY RECITALS

Pursuant to a petition filed December 10, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 08, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly denied the Petitioner's application for BadgerCare Plus benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Garrett Roach
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 18, 2012, the agency issued a Notice of Decision to the Petitioner informing him that his BadgerCare Plus benefits would end February 1, 2012 because a renewal had not been

completed. The notice informed the Petitioner that an appeal of this determination was required to be filed on or before March 19, 2012.

3. On January 20, 2012, the agency conducted a phone interview with the Petitioner. At that time, the case was pended for proof of access to insurance.
4. The Petitioner did not complete the renewal by providing requested information on or before January 31, 2012. The case was put in "pending closed status."
5. The Petitioner's pending closed case was reviewed on November 7, 2012.
6. On November 8, 2012, the agency issued a Notice of Decision to the Petitioner informing him that his application of November 7, 2012 for BadgerCare Plus benefits was denied.
7. The Petitioner filed an appeal with the Division of Hearings and Appeals on December 10, 2012.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning Medical Assistance (MA), including BadgerCare Plus, must be filed within 45 days of the date of the action. Wis. Stats., § 49.45(5). A negative action can be the denial of an application or the reduction or termination of an ongoing case.

In this case, the Petitioner's BadgerCare Plus benefits ended on February 1, 2012. The case was placed in a pending closed status when the Petitioner failed to complete his renewal. The agency failed to take action to completely close the Petitioner's case out of the system but the Petitioner has not received any benefits since February 1, 2012. The agency took no additional negative action against the Petitioner on November 7, 2012. There was no application filed on November 7, 2012 as indicated by the Notice of Decision dated November 8, 2012. That notice was issued in error. Because the negative action against the Petitioner took place on February 1, 2012, the Petitioner had 45 days from the date of that action to file an appeal or until March 19, 2012. The petitioner's appeal was filed 314 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

CONCLUSIONS OF LAW

The Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

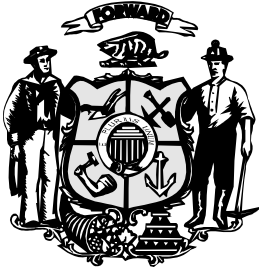
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of February, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 26, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability